



The Comptroller General
of the United States

Washington, D.C. 20548

Gilhooley

Decision

Matter of: Johnson Energy Management Company, Inc.
File: B-234730
Date: June 8, 1989

DIGEST

Certificate of competency (COC) procedures do not apply when a small business firm's offer in a negotiated procurement is considered weak under technical evaluation factors relating to experience and company resources since the COC program is reserved for reviewing nonresponsibility matters, not the comparable evaluation of technical proposals.

DECISION

Johnson Energy Management Company, Inc. (JEMCO), protests the award of a contract to Johnson Controls, Inc., under request for proposals (RFP) No. 88-126(N), issued by the Centers for Disease Control (CDC), Department of Health and Human Services for preventive maintenance and repair services for the Emergency Alert System (EAS). The EAS is a computer based facility management system for fire alarm and security monitoring. JEMCO, a small business, contends that CDC, in evaluating its proposal, made a determination of nonresponsibility with respect to the firm and that, therefore, the matter should have been referred to the Small Business Administration (SBA) under the certificate of competency (COC) procedures.

We deny the protest.

The RFP required offerors to submit separate technical and business proposals. Technical proposals were to be evaluated on the following factors: technical approach and understanding the requirement, qualifications of individuals, corporate or company resources, and firm's experience in similar work. The RFP advised offerors that the evaluation of technical proposals and cost or price was of approximately equal value, and award would be made to the responsible offeror whose offer was determined most advantageous to the government.

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CDC received three timely proposals, including JEMCO's. JEMCO's proposal was determined technically unacceptable and excluded from the competitive range. In its protest letter to our Office, JEMCO requested that CDC or our Office release all offerors' proposals and the agency's evaluation of proposals. CDC initially denied access to these documents and argued that the release of the requested information would tend to confer a competitive advantage. We agreed with CDC's decision not to release other offerors' proposals and their evaluations because that information was not essential for JEMCO to meaningfully pursue its protest. However, we disagreed with CDC's decision with respect to JEMCO and arranged for the release to JEMCO of the documentation concerning its own evaluation because it was relevant and necessary to give JEMCO a meaningful opportunity to pursue its protest challenging its elimination from the competitive range. See Validity Corp., B-233832, Apr. 19, 1989, 89-1 CPD ¶ _____. In the context of this procurement, we saw no reason why disclosure of this information about JEMCO's own evaluation would confer an unfair competitive advantage. Id.

JEMCO contends that its elimination from the competition as technically unacceptable was in reality a finding of nonresponsibility which should have been referred to the SBA under the COC procedures. JEMCO asserts that the alleged deficiencies in its proposal actually pertain to its capability to perform, and thus relate to its responsibility rather than its technical acceptability. As an example, JEMCO cites a portion of the technical evaluation report which describes JEMCO's company resources as weak and which notes that JEMCO does not indicate that its supply of spare parts will work at CDC or that it can provide repairs to the latest revision levels as required by the statement of work. As another example, JEMCO points to a statement in the technical evaluation report that "[T]here is nothing in the proposal which would indicate that JEMCO has in-house expertise and experience with all components of the emergency alert system."

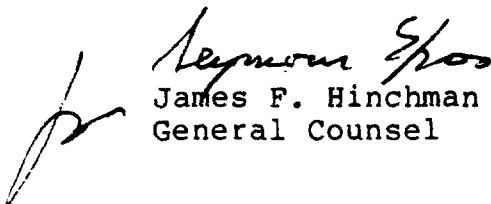
We find JEMCO's argument with respect to nature of the deficiencies to be without merit. The deficiencies identified in JEMCO's offer in fact related to specific and identified evaluation factors set forth in the RFP. With respect to these factors, it is not improper in a negotiated procurement to include traditional responsibility factors among the technical evaluation criteria, Pacific Computer Corp., B-224518.2, Mar. 17, 1987, 87-1 CPD ¶ 292. Such factors may include experience and personnel qualifications. B&W Service Industries Inc., B-224392.2, Oct. 2, 1986, 86-2 CPD ¶ 384. As long as the factors are limited to areas

which, when evaluated comparatively, can provide an appropriate basis for a selection that will be in the government's best interest, COC procedures do not apply to such technical proposal deficiencies. Arrowsmith Industries, Inc., B-233212, Feb. 8, 1989, 89-1 CPD ¶ 129.

In our view, the evaluation factors used here, company resources, experience and qualifications of individuals, were appropriate for comparative evaluation in a negotiated procurement involving preventive maintenance and repair services for the CDC's Emergency Alert System. Since these were technical evaluation factors, COC procedures were inapplicable to JEMCO's proposal in these areas, and we therefore deny this protest ground.

JEMCO also argues that CDC could have enjoyed substantial savings by awarding JEMCO a contract because its proposed price was substantially lower than the awardee's contract price. However, although JEMCO may have offered to perform the contract at the lowest cost to the government, it also submitted a technically unacceptable proposal. JEMCO's potentially lower price is therefore irrelevant, since once a proposal is found technically unacceptable, it cannot be considered for award. Evaluation Technology, Inc., B-232054, Nov. 15, 1988, 88-2 CPD ¶ 477.

The protest is denied.


James F. Hinchman
General Counsel